

REMARKS

The continued allowability of claims 4, 16 and 19-21 is again acknowledged appreciatively.

The rejection from the cited Baro, et al. (hereafter Baro) patent of independent claims 1 and 2, and as it might be applied to new independent claim 25, which also relates to the previously claimed controllable gastric band, is traversed. A rejection under 35 USC 102 for obviousness requires:

The identical invention ... [to] be shown in as complete detail as is considered in the ... claim. *MPEP* 2131 (citation omitted).

Such is not the case.

Claim 1 provides, inter alia, a first chamber that controls stoma restriction and a second chamber that ensures the control of the first chamber by displacement of liquid between the first and second chambers. Applying these provisions of claim 1 to Fig. 4 of the Baro patent, we see that displacing fluid to the first chamber 8 identified in the Action, albeit with reference to claim 2, from the second chamber 9 would press an equal amount of fluid out conduit 4 rather than have any inflation effect on first chamber 8 for ensuring its control, as claimed. Therefore, chamber 8 of the Baro patent cannot be the first chamber of claim 1, as indicated in the Action.

If it were said, instead, that the first chamber of claim 1 were chamber 9 of Fig. 4 of the Baro patent, then it is true that displacing fluid from second chamber 8 could ensure control of first chamber 8, but this is not claimed. Claim 1 requires displacement of the liquid between the chambers and the displacement in the Barro patent is, instead, from conduit 4 and not the second chamber.

In both cases, too, as noted in the last Amendment, whatever control whichever first chamber 8 or 9 of the Baro patent has on the stoma is not from the chamber, but from the conduit 4. Conduit 4 of the Baro patent must supply the liquid pressure that controls the stoma with a chamber, but no chamber is for controlling the stoma as in claim 1.

The rejection of claim 2 in the Action confirms this by acknowledging that "... conduit 4 extends to a ... pump ..." at Action-noted col. 3, lines 49-50, and, for example, further noted col. 3, line 57, of the Baro patent. We quote:

... when the pump is actuated, the fluid is forced into the chambers

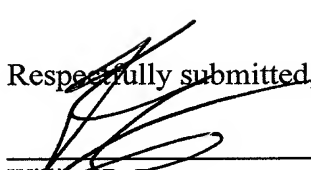
Therefore, the pump and conduit 4 of the Baro patent control the fluid in its chambers and, thereby, the stoma control. A first chamber does not, as claimed.

New claim 25 requires a chamber for adjusting restriction of the stoma as a function of sensor-detected pressure increase. In relation to Fig. 4 of the Baro patent where the Action finds a sensor 9, it will be appreciated that, if the stoma pressure increases, the pressures in the chambers could correspondingly increase, but this would leave the restriction of the stoma the same, and not adjusted up or down as a function of the sensor-detected pressure increase, as claimed.

The Baro patent also discloses a pressure sensor 12. However, col. 4, lines 22-26, of the Baro patent confirms that this works oppositely to restriction adjustment as a function of sensor-detected pressure increase that is claimed. When the sensed pressure increases to a given pressure in the patent, decompression of the sphincter operation is advisable according to the patent. According to the patent, therefore, restriction adjustment is not a function but an inverse function of sensor-detected pressure increase, which is the opposite of the claim.

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



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